

EXHIBIT 1

TO OPPOSITION TO MOTION TO COMPEL

KELLEY v. MICROSOFT CORPORATION
Microsoft's Amended Responses to Plaintiff's Requests for Admission

Terminology Microsoft Says It Does Not Understand

RFA # 4, 10, 22	“necessary to properly run” e.g., Vista Home Basic
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Request No. 4: “Windows Vista Capable” refers to minimum specification requirements of a personal computer (“PC”) that are necessary to properly run Vista Home Basic.

Response: Microsoft objects to this request on the grounds that the phrase “necessary to properly run” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that the placement of a “Windows Vista Capable” logo on a PC constituted a contractually permissible statement by the OEM authorized to put it there that the PC met at least the minimum hardware and other requirements for one or more editions of a Windows Vista operating system to install and run. Otherwise, Microsoft denies this request.

Request No. 10: “Premium Ready” refers to minimum specification requirements of a PC that are necessary to properly run Vista Home Premium.

Response: Microsoft objects to this request on the grounds that “necessary to properly run” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that a “Premium Ready” designation constituted a contractually permissible statement by the OEM authorized to make it that the PC met at least the minimum hardware and other requirements for a Windows Vista Premium edition, as described in the OEM marketing bulletin and the applicable logo license agreement, and that the PC qualified for and bore the “Windows Vista Capable” logo. Otherwise, Microsoft denies this request.

Request No. 22: The “Windows Vista Capable” sticker does not indicate that the PC to which it is affixed cannot properly run Vista Home Premium.

Response: Microsoft objects to this request on the grounds that the word “indicate” and the phrase “cannot properly run” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft denies this request and incorporates by reference its response to Request for Admission No. 15. By way of further response, the “Windows Vista Capable” logo was a contractually permissible statement by the OEM authorized to place it there that the PC met at least the minimum hardware and other requirements for one or more editions of a Windows Vista operating system to install and run. Many PCs bearing the Windows Vista Capable logo provide the features of Windows Vista Premium editions.

RFA # 5, 11, 13	“certified,” e.g., as Windows Vista Capable
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Request No. 5: Microsoft established the minimum specification requirements necessary for a PC to be certified as “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the word “certified” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that Microsoft established the minimum hardware and other requirements that would permit an OEM to label a PC with the “Windows Vista Capable” logo. Otherwise, Microsoft denies this request.

Request No. 11: Microsoft established the minimum specification requirements necessary for a PC to be certified as “Premium Ready.”

Response: Microsoft objects to this request on the grounds that the word “certified” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that Microsoft established the minimum hardware and other requirements that would permit an OEM to designate a PC as “Premium Ready.” Otherwise, Microsoft denies this request.

Request No. 13: A PC certified by Microsoft as “Premium Ready” also had affixed to it a “Windows Vista Capable” sticker.

Response: Microsoft objects to this request on the grounds that the word “certified” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that OEMs were authorized to designate a PC as “Premium Ready” if the PC met the minimum hardware and other requirements for a Windows Vista Premium operating system and qualified for and bore the “Windows Vista Capable” logo. Otherwise, Microsoft denies this request.

RFA # 6, 12	“certification,” e.g. in reference to the Windows Vista Capable sticker
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Request No. 6: A “Windows Vista Capable” logo sticker on a PC constituted a certification by Microsoft that the PC to which it was affixed would properly run Vista Home Basic.

Response: Microsoft objects to this request on the grounds that the word “certification” and the phrase “properly run” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft denies this request.

Request No. 12: A “Premium Ready” logo sticker on a PC constituted a certification by Microsoft that the PC to which it was affixed would properly run Vista Home Premium.

Response: Microsoft objects to this request on the grounds that the word “certification” and the phrase “properly run” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that a “Premium Ready” designation constituted a contractually permissible statement by the OEM authorized to make it that the PC met at least the minimum hardware and other requirements for the Windows Vista Premium editions, as described in the applicable logo license agreement and OEM marketing bulletin, and that the PC qualified for and bore the “Windows Vista Capable” logo. Otherwise, Microsoft denies this request.

RFA # 6, 12, 16	“properly run,” e.g. Vista Home Basic
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Request No. 6: A “Windows Vista Capable” logo sticker on a PC constituted a certification by Microsoft that the PC to which it was affixed would properly run Vista Home Basic.

Response: Microsoft objects to this request on the grounds that the word “certification” and the phrase “properly run” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft denies this request.

Request No. 12: A “Premium Ready” logo sticker on a PC constituted a certification by Microsoft that the PC to which it was affixed would properly run Vista Home Premium.

Response: Microsoft objects to this request on the grounds that the word “certification” and the phrase “properly run” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that a “Premium Ready” designation constituted a contractually permissible statement by the OEM authorized to make it that the PC met at least the minimum hardware and other requirements for the Windows Vista Premium editions, as described in the applicable logo license agreement and OEM marketing bulletin, and that the PC qualified for and bore the “Windows Vista Capable” logo. Otherwise, Microsoft denies this request.

Request No. 16: The “Windows Vista Capable” sticker does not indicate that the PC to which it is affixed can only properly run Vista Home Basic.

Response: Microsoft objects to this request on the grounds that the word “indicate” and the phrase “properly run” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft denies this request. By way of further response, the “Windows Vista Capable” logo was a contractually permissible statement by the OEM authorized to place it there that the PC met at least the minimum hardware and other requirements for one or more editions of a Windows Vista operating system to install and run. Many PCs bearing the “Windows Vista Capable” logo will run the features of Windows Vista Premium editions.

# RFA # 16, 22	“indicate,” e.g. that a PC with a windows Vista Capable sticker ran only Vista Home Basic
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Request No. 16: The “Windows Vista Capable” sticker does not indicate that the PC to which it is affixed can only properly run Vista Home Basic.

Response: Microsoft objects to this request on the grounds that the word “indicate” and the phrase “properly run” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft denies this request. By way of further response, the “Windows Vista Capable” logo was a contractually permissible statement by the OEM authorized to place it there that the PC met at least the minimum hardware and other requirements for one or more editions of a Windows Vista operating system to install and run. Many PCs bearing the “Windows Vista Capable” logo will run the features of Windows Vista Premium editions.

Request No. 22: The “Windows Vista Capable” sticker does not indicate that the PC to which it is affixed cannot properly run Vista Home Premium.

Response: Microsoft objects to this request on the grounds that the word “indicate” and the phrase “cannot properly run” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft denies this request and incorporates by reference its response to Request for Admission No. 15. By way of further response, the “Windows Vista Capable” logo was a contractually permissible statement by the OEM authorized to place it there that the PC met at least the minimum hardware and other requirements for one or more editions of a Windows Vista operating system to install and run. Many PCs bearing the Windows Vista Capable logo provide the features of Windows Vista Premium editions.

RFA # 20-21	“certified to work with PCs,” e.g. of different versions of Vista
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Request No. 20: Microsoft considered using a logo to be affixed to computers prior to the launch of Vista that designated Business as the version of Vista that was being certified to work with PCs to which the logo would be affixed.

Response: Microsoft objects to this request on the grounds that the phrase “certified to work with PCs” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

Request No. 21: Microsoft considered using a logo to be affixed to computers prior to the launch of Vista that designated Ultimate as the version of Vista that was being certified to work with PCs to which the logo would be affixed.

Response: Microsoft objects to this request on the grounds that the phrase “certified to work with PCs” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

RFA # 23, 25, 27, 29	“at the time of sale”
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Request No. 23: Microsoft did not require retailers which sold PCs designated as “Windows Vista Capable” to consumers, to provide consumers, at the time of sale, with an explanation as to the meaning of “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the phrases “at the time of sale” and “explanation as to the meaning” are vague and ambiguous with respect to their intended meaning. Microsoft also objects to the term “retailers” as vague and ambiguous. For purposes of all its responses to these Requests for Admissions, Microsoft understands the term to refer to non-OEM companies (e.g., Best Buy) that sold PCs with a Microsoft operating system pre-installed.

Subject to and without waiver of its foregoing objections, Microsoft denies this request because it denies that it had the power to require retailers to take actions or not take actions with respect to the “Windows Vista Capable” program. That program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

Request No. 25: Microsoft did not require retailers which sold PCs designated as “Windows Vista Capable” to consumers, to provide consumers, at the time of sale, with an explanation as to the limitations of “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the phrases “at the time of sale” and “explanation as to the limitations” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection and its objection to and definition of the term “retailers,” Microsoft denies that it had the power to require retailers to take actions or not take actions with respect to the “Windows Vista Capable” program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

Request No. 27: Microsoft did not require retailers which sold PCs designated as “Windows Vista Capable” to consumers, to provide consumers, at the time of sale, with written information as to the meaning of “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the phrases “at the time of sale” and “as to the meaning of” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection and its objection to and definition of the term “retailers,” Microsoft denies that it had the power to require retailers to take actions or not take actions with respect to the “Windows Vista Capable” program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

Request No. 29: Microsoft did not require retailers which sold PCs designated as “Windows Vista Capable” to consumers, to provide consumers, at the time of sale, with written information as to the limitations of “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the phrases “at the time of sale” and “as to the limitations of” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection and its objection to and definition of the term “retailers,” Microsoft denies that it had the power to require retailers to take actions or not take actions with respect to the “Windows Vista Capable” program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

RFA # 23

“explanation as to meaning,” e.g., meaning of the sticker

Request No. 23: Microsoft did not require retailers which sold PCs designated as “Windows Vista Capable” to consumers, to provide consumers, at the time of sale, with an explanation as to the meaning of “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the phrases “at the time of sale” and “explanation as to the meaning” are vague and ambiguous with respect to their intended meaning. Microsoft also objects to the term “retailers” as vague and ambiguous. For purposes of all its responses to these Requests for Admissions, Microsoft understands the term to refer to non-OEM companies (e.g., Best Buy) that sold PCs with a Microsoft operating system pre-installed.

Subject to and without waiver of its foregoing objections, Microsoft denies this request because it denies that it had the power to require retailers to take actions or not take actions with respect to the “Windows Vista Capable” program. That program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

RFA # 25

“explanation as to the limitation,” i.e., of the term Windows Vista Capable

Request No. 25: Microsoft did not require retailers which sold PCs designated as “Windows Vista Capable” to consumers, to provide consumers, at the time of sale, with an explanation as to the limitations of “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the phrases “at the time of sale” and “explanation as to the limitations” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection and its objection to and definition of the term “retailers,” Microsoft denies that it had the power to require retailers to take actions or not take actions with respect to the “Windows Vista Capable” program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

RFA # 27

“as to the meaning of” in reference to Windows Vista Capable

Request No. 27: Microsoft did not require retailers which sold PCs designated as “Windows Vista Capable” to consumers, to provide consumers, at the time of sale, with written information as to the meaning of “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the phrases “at the time of sale” and “as to the meaning of” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection and its objection to and definition of the term “retailers,” Microsoft denies that it had the power to require retailers to take actions or not take actions with respect to the “Windows Vista Capable” program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

RFA # 29	“as to the limitations of” in reference to Windows Vista Capable
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Request No. 29: Microsoft did not require retailers which sold PCs designated as “Windows Vista Capable” to consumers, to provide consumers, at the time of sale, with written information as to the limitations of “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the phrases “at the time of sale” and “as to the limitations of” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection and its objection to and definition of the term “retailers,” Microsoft denies that it had the power to require retailers to take actions or not take actions with respect to the “Windows Vista Capable” program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

RFA # 31, 33	“display materials for the benefit of customers”
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Request No. 31: Microsoft did not require retailers which sold PCs designated as “Windows Vista Capable” to consumers, to display materials for the benefit of consumers that explained the meaning of “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the phrase “display materials for the benefit of consumers” and “meaning of” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection and its objection to and definition of the term “retailers,” Microsoft denies that it had the power to require retailers to take actions or not take actions with respect to the “Windows Vista Capable” program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

Request No. 33: Microsoft did not require retailers which sold to consumers PCs designated as “Windows Vista Capable” to display materials for the benefit of consumers that explained the limitations of that designation.

Response: Microsoft objects to this request on the grounds that the phrase “display materials for the benefit of consumers” and “limitations of” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection and its objection to and definition of the term “retailers,” Microsoft denies that it had the power to require retailers to take actions or not actions with respect to the “Windows Vista Capable” program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

RFA # 31	“meaning of” in reference to Windows Vista Capable
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Request No. 31: Microsoft did not require retailers which sold PCs designated as “Windows Vista Capable” to consumers, to display materials for the benefit of consumers that explained the meaning of “Windows Vista Capable.”

Response: Microsoft objects to this request on the grounds that the phrase “display materials for the benefit of consumers” and “meaning of” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection and its objection to and definition of the term “retailers,” Microsoft denies that it had the power to require retailers to take actions or not take actions with respect to the “Windows Vista Capable” program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

RFA # 33	“limitations of” in reference to Windows Vista Capable
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Request No. 33: Microsoft did not require retailers which sold to consumers PCs designated as “Windows Vista Capable” to display materials for the benefit of consumers that explained the limitations of that designation.

Response: Microsoft objects to this request on the grounds that the phrase “display materials for the benefit of consumers” and “limitations of” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection and its objection to and definition of the term “retailers,” Microsoft denies that it had the power to require retailers to take actions or not actions with respect to the “Windows Vista Capable” program because that program refers to and arose out of contractual relationships between Microsoft and OEMs, not retailers. The applicable logo license agreement and OEM marketing bulletin required the OEMs to provide end users with information about the capabilities of PCs that bore the “Windows Vista Capable” logo, as set forth above. Microsoft did develop and make marketing materials available to retailers concerning the “Windows Vista Capable” program, although Microsoft could not require retailers to use those materials.

RFA # 45, 46	“maintain consumer demand”
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Request No. 45: “Windows Vista Capable” stickers were intended by Microsoft to maintain consumer demand for new PCs, with Windows XP pre-installed, prior to the actual release of Vista.

Response: Microsoft objects to this request on the grounds that “maintain consumer demand” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that the “Windows Vista Capable” logo was intended in part to encourage consumers not to delay their purchases of new PCs until the release of Windows Vista. Otherwise, Microsoft denies this request.

Request No. 46: The Vista Upgrade Express program was intended by Microsoft to maintain consumer demand for new PCs, with Windows XP pre-installed, prior to the actual release of Vista.

Response: Microsoft objects to this request on the grounds that “maintain consumer demand” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that the “Windows Vista Express Upgrade” program was intended in part to encourage consumers not to delay their purchases of new PCs until the release of Windows Vista. Otherwise, Microsoft denies this request.

RFA # 62	“Vista Upgrade EULA”
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Request No. 62: Microsoft drafted the Vista Upgrade EULA.

Response: Microsoft objects to this request because the term “Vista Upgrade EULA” is vague and ambiguous with respect to its intended meaning. There is no exhibit attached to Plaintiffs’ Requests that Plaintiffs have defined as the “Vista Upgrade EULA.”

RFA # 64	“the OEM License Agreement”
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Request No. 64: Microsoft drafted the OEM License Agreement.

Response: Microsoft objects to this request because, in the context of this request, the phrase “the OEM License Agreement” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, and assuming that “the OEM License Agreement” refers to the document attached to Plaintiffs’ Requests as Exhibit H, Microsoft admits this request.

RFA # 76-79	“monitored,” e.g., OEM advertising materials
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Request No. 76: Microsoft monitored the advertising materials of PC retailers in order to assure the accuracy of such materials as related to Vista.

Response: Microsoft objects to this request on the grounds that the word “monitored” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft denies this request.

Request No. 77: Microsoft monitored the advertising materials of PC retailers in order to assure the accuracy of such materials as related to the “Windows Vista Capable” program.

Response: Microsoft objects to this request on the grounds that the word “monitored” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft denies this request.

Request No. 78: Microsoft monitored the promotional materials of PC retailers in order to assure the accuracy of such materials as related to Vista.

Response: Microsoft objects to this request on the grounds that the word “monitored” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft denies this request.

Request No. 79: Microsoft monitored the promotional materials of PC retailers in order to assure the accuracy of such materials as related to the “Windows Vista Capable” program.

Response: Microsoft objects to this request on the grounds that the word “monitored” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft denies this request.

RFA # 80-83	“established procedures”
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Request No. 80: Microsoft established procedures to minimize the likelihood of errors by PC manufacturers in placing “Windows Vista Capable” stickers on PCs intended for sale to consumers.

Response: Microsoft objects to this request on the grounds that the phrases “established procedures” and “minimize the likelihood of errors” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that the applicable logo agreement contained terms intended to minimize the likelihood that a PC manufacturer would place the “Windows Vista Capable” logo on a PC that did not qualify for the logo. Otherwise, Microsoft denies this request.

Request No. 81: Microsoft established procedures to eliminate the likelihood of errors by PC manufacturers in placing “Windows Vista Capable” stickers on PCs intended for sale to consumers.

Response: Microsoft objects to this request on the grounds that the phrases “established procedures” and “the likelihood of errors” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that the applicable logo agreement contained terms intended to minimize the likelihood that a PC manufacturer would place the “Windows Vista Capable” logo on a PC that did not qualify for the logo. Otherwise, Microsoft denies this request.

Request No. 82: Microsoft established procedures to minimize the likelihood of errors by PC manufacturers in placing “Premium Ready” stickers on PCs intended for sale to consumers.

Response: Microsoft objects to this request on the grounds that the phrases

“established procedures” and “minimize the likelihood of errors” are vague and ambiguous with respect to their intended meaning.

Microsoft further objects to this request on the grounds that the applicable logo agreement did not permit PC manufacturers to place “Premium Ready” stickers on PCs.

Request No. 83: Microsoft established procedures to eliminate the likelihood of errors by PC manufacturers in placing “Premium Ready” stickers on PCs intended for sale to consumers.

Response: Microsoft objects to this request on the grounds that the phrases “established procedures” and “minimize the likelihood of errors” are vague and ambiguous with respect to their intended meaning.

Microsoft further objects to this request on the grounds that the applicable logo agreement did not permit PC manufacturers to place “Premium Ready” stickers on PCs. errors by PC manufacturers in placing “Premium Ready” stickers on PCs intended for sale to consumers.

RFA # 80, 82-83	“minimize the likelihood of errors”
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Request No. 80: Microsoft established procedures to minimize the likelihood of errors by PC manufacturers in placing “Windows Vista Capable: sticks on PCs intended for sale to consumers.

Response: Microsoft objects to this request on the grounds that the phrases “established procedures” and “minimize the likelihood of errors” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that the applicable logo agreement contained terms intended to minimize the likelihood that a PC manufacturer would place the “Windows Vista Capable” logo on a PC that did not qualify for the logo. Otherwise, Microsoft denies this request.

Request No. 82: Microsoft established procedures to minimize the likelihood of errors by PC manufacturers in placing “Premium Ready” stickers on PCs intended for sale to consumers.

Response: Microsoft objects to this request on the grounds that the phrases “established procedures” and “minimize the likelihood of errors” are vague and ambiguous with respect to their intended meaning.

Microsoft further objects to this request on the grounds that the applicable logo agreement did not permit PC manufacturers to place “Premium Ready” stickers on PCs.

Request No. 83: Microsoft established procedures to eliminate the likelihood of errors by PC manufacturers in placing “Premium Ready” stickers on PCs intended for sale to consumers.

Response: Microsoft objects to this request on the grounds that the phrases

“established procedures” and “minimize the likelihood of errors” are vague and ambiguous with respect to their intended meaning.

Microsoft further objects to this request on the grounds that the applicable logo agreement did not permit PC manufacturers to place “Premium Ready” stickers on PCs.

RFA # 81	“the likelihood of errors”
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Request No. 81: Microsoft established procedures to eliminate the likelihood of errors by PC manufacturers in placing “Windows Vista Capable” stickers on PCs intended for sale to consumers.

Response: Microsoft objects to this request on the grounds that the phrases “established procedures” and “the likelihood of errors” are vague and ambiguous with respect to their intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that the applicable logo agreement contained terms intended to minimize the likelihood that a PC manufacturer would place the “Windows Vista Capable” logo on a PC that did not qualify for the logo. Otherwise, Microsoft denies this request.

RFA # 84-85, 88-89	“there has been concern or opinion within Microsoft,” i.e., as to the misleading nature of the sticker
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Request No. 84: Prior to Microsoft’s public use of the term “Windows Vista Capable,” there had been concern or opinion within Microsoft that the use of the word “capable,” within the term “Windows Vista Capable,” could be misleading to consumers.

Response: Microsoft objects to this request on the grounds that the clause “there had been concern or opinion within Microsoft” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

Request No. 85: Prior to Microsoft’s public use of the term “Windows Vista Capable,” there had been concern or opinion within Microsoft that the use of the word “capable,” within the term “Windows Vista Capable,” could be confusing to consumers.

Response: Microsoft objects to this request on the grounds that the clause “there had been concern or opinion within Microsoft” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

Request No. 88: Prior to the filing of this lawsuit, there had been concern or opinion within Microsoft that use of the word “capable,” within the term “Windows Vista Capable,” could be misleading to consumers.

Response: Microsoft objects to this request on the grounds that the clause “there had been concern or opinion within Microsoft” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

Request No. 89: Prior to the filing of this lawsuit, there had been concern or opinion within Microsoft that use of the word “capable,” within the term “Windows Vista Capable,” could be confusing to consumers.

Response: Microsoft objects to this request on the grounds that the clause “there had been concern or opinion within Microsoft” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

RFA # 86-87, 90-91 “there had been concern or opinion expressed or otherwise made known to Microsoft,” i.e., as to the misleading nature of the sticker

Request No. 86: Prior to Microsoft’s public use of the term “Windows Vista Capable,” there had been concern or opinion expressed or otherwise made known to Microsoft that the use of the word “capable,” within the term “Windows Vista Capable,” could be misleading to consumers.

Response: Microsoft objects to this request on the grounds that the clause “there had been concern or opinion expressed or otherwise made known to Microsoft” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

Request No. 87: Prior to Microsoft’s public use of the term “Windows Vista Capable,” there had been concern or opinion expressed or otherwise made known to Microsoft that the use of the word “capable,” within the term “Windows Vista Capable,” could be confusing to consumers.

Response: Microsoft objects to this request on the grounds that the clause “there had been concern or opinion expressed or otherwise made known to Microsoft” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

Request No. 90: Prior to the filing of this lawsuit, there had been concern or opinion expressed or otherwise made known to Microsoft that the use of the word “capable,” within the term “Windows Vista Capable,” could be misleading to consumers.

Response: Microsoft objects to this request on the grounds that the clause “there had been concern or opinion expressed or otherwise made known to Microsoft” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

Request No. 91: Prior to the filing of this lawsuit, there had been concern or opinion expressed or otherwise made known to Microsoft that the use of the word “capable,” within the term “Windows Vista Capable,” could be confusing to consumers.

Response: Microsoft objects to this request on the grounds that the clause “there had been concern or opinion expressed or otherwise made known to Microsoft” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification.

RFA # 92-93	“Vista features”
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Request No. 92: Windows Vista Starter and Vista Home Basic have Vista features in common.

Response: Microsoft objects on the grounds that the phrase “Vista features” is vague and ambiguous with respect to its intended meaning.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification since Windows Vista Starter is not sold in developed countries, including the United States.

Subject to and without waiver of its foregoing objections, Microsoft denies this request but admits that Windows Vista Starter and Windows Vista Home Basic have some but not all features in common.

Request No. 93: Windows Vista Starter and Vista Home Basic have more Vista features in common than Vista Home Basic has in common with Vista Home Premium.

Response: Microsoft objects on the grounds that the phrase “Vista features” is vague and ambiguous with respect to its intended meaning. Without a definition of what Plaintiffs mean by “Vista features” (e.g., whether “Vista features” means features that were never included in, or available for, any previous Windows operating system or whether it includes improvements to features that existed in previous Windows operating systems), it is impossible to respond to this request.

Microsoft further objects on the grounds that this request does not seek information that is relevant to class certification since Windows Vista Starter is not sold in developed countries, including the United States.

RFA # 97	“secured rights,” i.e., of a contractor who published Windows Vista The Official Magazine
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Request No. 97: Future US, Inc., Future pic, or an affiliated or related entity of either, secured rights from Microsoft to publish “Windows Vista™ The Official Magazine.”

Response: Microsoft objects on the grounds that the phrase “secured rights” is vague and ambiguous with respect to its intended meaning.

Subject to and without waiver of its foregoing objection, Microsoft admits only that it entered into a Publication Agreement with Future Publishing Limited (“Future”) as of October 13, 2005, in which Microsoft appointed Future to publish an official Windows Vista magazine under the terms and conditions set forth in the agreement. The specific rights and obligations of Microsoft and Future with respect to the official Windows Vista magazine are set forth in the Publication Agreement and Microsoft therefore admits this request to the extent the Publication Agreement sets out the rights Future acquired under that agreement (which it does). Otherwise, Microsoft denies this request.